

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3566 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SANJAY @ SATUK KALUBHAI PRAJAPATI

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/12/1999

ORAL JUDGEMENT

#. The petitioner is detained under the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Surat City, Surat, on 23rd February, 1999, in exercise of powers under Section 3(1) of the PASA Act.

#. In the grounds of detention, the detaining

authority took into consideration five registered offences against the petitioner. Statements of two anonymous witnesses in respect of incidents dated December 10, 1998 and January 7, 1999 were considered. The authority, ultimately, recorded a subjective satisfaction that the incidents narrated by the anonymous witnesses and the fear expressed by the said witnesses appear to be correct and genuine and there is need for exercise of powers under Section 9(2) of the PASA Act. After considering the possibility of resorting to other less drastic remedies, the authority came to conclusion that in order to immediately prevent the petitioner from pursuing his illegal and anti-social activities, detention under PASA is necessary.

#. The petitioner challenges the order of detention by this petition under Article 226 of the Constitution on various grounds. It is contended that the subjective satisfaction recorded by the detaining authority regarding public order is not genuine. Another ground that is raised is that there is delay in passing the order of detention and, lastly, it is contended that the statements were verified on 22nd February, 1999 and the order was passed on 23rd February, 1999 and, therefore, there was no time for the detaining authority to come to a subjective satisfaction regarding need for exercise of powers under Section 9(2) of the PASA Act.

#. Mr. Gondalia, learned advocate appearing for Mr. Lakhani, learned advocate for the petitioner, pressed into service only the above grounds. He submitted that the last registered offence is dated August 7, 1998. The statements were recorded on 27th and 28th January, 1999. The statements were verified by the detaining authority on 22nd February, 1999 and the order was passed on 23rd February, 1999. He, therefore, submitted that the last registered offence was about six months earlier and, therefore, there is gross delay. He submitted that the subjective satisfaction in respect of exercise of powers under Section 9(2) is also not based on any material. As regards the public order, he submitted that the statements of the anonymous witnesses do not reveal the area of operation and, therefore, the petitioner could not meet with the allegations by making an effective representation. The grounds and, therefore, ambiguous, which would vitiate the detention.

#. Mr. Joshi, learned Assistant Government Pleader, submitted that in facts of the present case, it cannot be said that there is inordinate delay. He submitted that the last statement was recorded on 28th January, 1999 and

the order was passed on 23rd February, 1999. So the time lag is only 25 days. He placed reliance on decision of this Court in the case of *Premsing @ Pallu Jesing Rajput v. State of Gujarat and Ors.*, 1999(1) GLH 648 and submitted that the petition may be dismissed.

#. Now, coming to the facts of the case in light of the rival side contentions, the first point that can be considered is in respect of delay in passing the order. The date of last registered offence is 7th August, 1998. The statements are recorded on 28th January, 1999. They are verified on 22nd February, 1999 and the order is passed on 23rd February, 1999. Therefore, if the last registered offence is considered and the date of passing of order is considered, there is a time gap of about five months.

#. Now considering the decision relied upon by Mr. Joshi in the case of *Premsing (supra)*, it has held that the period of delay has to be computed from the date of commission of last offence which could be unregistered offence as well. If that be so, then from the statements, it is clear that the last such offence is dated 7th January, 1999. In that event, the statements were verified and the order was passed after a lapse of about 6 weeks.

7.1 It may be noted, at this stage, that, as submitted by Mr. Joshi, the delay is not inordinate. This means that factum of delay has to be accepted as has rightly been done by Mr. Joshi. Now, to consider whether the delay is inordinate or not, the Court must have some material before it which may tender explanation for the delay. No affidavit is filed here by the authorities concerned. So, there is no explanation coming forward of any nature which can explain the time consumed between 7th January, 1999 and 23rd February, 1999, the date on which the last unregistered offence is alleged to have occurred and the date of order of detention, respectively.

7.2 It may be noted that the decision in the case of *Premsing (supra)*, which is relied upon by Mr. Joshi, learned Assistant Government Pleader, does not lay down any principle that a period of one month in passing the order would be reasonable or that it would not render the order of detention invalid. That was a decision in facts of that case and, therefore, it cannot help the authorities to justify the unexplained delay in passing the order. Total inaction on part of the authorities for about six weeks is reflected on the record and the period

of six weeks is not explained. The subjective satisfaction, therefore, that action under PASA Act is necessary to immediately prevent the petitioner from pursuing his illegal and anti-social activities cannot be said to have been arrived at genuinely. This would vitiate the order of detention.

#. Another ground that requires consideration is that the last statement of the anonymous witness was recorded on 28th January, 1999 and the same came to be verified on 22nd February, 1999, i.e. after a period of about 25 days and for this also, no explanation is tendered by the authorities concerned as to why this much time was consumed in processing the file and this delay also having remained unexplained, the subjective satisfaction for immediate action under PASA against the petitioner would stand vitiated.

8.1 The statements were verified on 22nd February, 1999 and the order of detention came to be passed on 23rd February, 1999. There was no time lag between these two events which could have made it possible for the detaining authority to arrive at a genuine subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. The powers under Section 9(2) of the PASA Act are required to be exercised in public interest and for that purpose, the authority has to satisfy itself that the incidents narrated by the anonymous witnesses are correct and the fear expressed by these witnesses qua the petitioner is genuine and, therefore, it is necessary to exercise the powers under Section 9(2) of the PASA Act. This will have a bearing not only on the question of public interest, but also on the right of the detenu of making an effective representation which is guaranteed by the Constitution and any error or lapse found in exercise of such power would render the detention order bad in law. The subjective satisfaction required to be recorded by the detaining authority is not by way of an empty formality and the authority has to take steps apart from interrogating the witnesses to satisfy itself that the incidents narrated by the witnesses and the fear expressed by the witnesses are correct and genuine. The detaining authority should have with it some material to arrive at subjective satisfaction. If the verification is on 22nd February, 1999 and the order is passed on 23rd February, 1999, there was no reasonable time lag between these two dates which would enable the detaining authority to undertake this exercise. In this regard decision in *cas of Kalidas Chandubhai Kahar v. State of Gujarat* [1993(2) GLR 1659] may be profitably referred, where the facts were quite similar.

#. On the grounds stated above, the order of detention stands vitiated. The petition, therefore, deserves to be allowed.

##. In the result, the petition is allowed. The order of detention dated 23rd February, 1999 in respect of the petitioner-Sanjay @ Satuk Kalubhai Prajapati is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

gt